

**ADMINISTRATIVE APPEAL RIGHTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends provisions of the Fair Housing Act.

**Highlighted Provisions:**

This bill:

- ▶ permits an aggrieved person to appeal a determination, of a director of the Division of Antidiscrimination and Labor, dismissing a complaint alleging housing discrimination under the Fair Housing Act; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**57-21-9**, as last amended by Laws of Utah 2016, Chapter 244

**57-21-10**, as last amended by Laws of Utah 2008, Chapter 382

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **57-21-9** is amended to read:

**57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --**

**Investigation -- Determination.**

(1) An aggrieved person may file a written verified complaint with the division within 180 days after the day on which an alleged discriminatory housing practice occurs.

(2) (a) The commission shall adopt rules consistent with ~~[the provisions of]~~ 24 C.F.R. Sec. 115.3 (1990), relating to procedures under related federal law, to govern:

- (i) the form of the complaint;
- (ii) the form of any answer to the complaint;

(iii) procedures for filing or amending a complaint or answer; and

(iv) the form of notice to ~~[parties]~~ a party accused of the ~~[acts]~~ act or ~~[omissions]~~ omission giving rise to the complaint.

(b) The commission may, by rule, prescribe any other procedure pertaining to the division's processing of the complaint.

(3) During the period beginning with the filing of the complaint and ending with the director's determination, the division shall, to the extent feasible, engage in conciliation with respect to the complaint.

(4) (a) The division shall commence proceedings to investigate and conciliate a complaint alleging a discriminatory housing practice within 30 days after the ~~[filing of the complaint]~~ day on which the complainant files the complaint.

(b) After the commencement of an investigation, any party may request that the commission review the proceedings to ~~[insure]~~ ensure compliance with the requirements of this chapter.

(5) (a) The division shall complete the investigation within 100 days after the ~~[filing of the complaint]~~ day on which the complainant files the complaint, unless it is impracticable to do so.

(b) If the division is unable to complete the investigation within 100 days after the ~~[filing of the complaint]~~ day on which the complainant files the complaint, the division shall notify the complainant and respondent in writing of the reasons for the delay.

(6) ~~[(a)]~~ If, as a result of the division's investigation, the director determines that there is no reasonable cause to support ~~[the allegations]~~ an allegation in the complaint, the director shall issue a written determination dismissing the complaint.

~~[(b) If the director dismisses the complaint pursuant to Subsection (6)(a), the complainant may request that the director reconsider the dismissal pursuant to Section 63G-4-302.]~~

~~[(c) Notwithstanding the provisions of Title 63G, Chapter 4, Administrative Procedures Act, the director's determination to dismiss a complaint or, in the case of a request for reconsideration, the director's order denying reconsideration is not subject to further agency action or direct judicial review. However, the complainant may commence a private action pursuant to Section 57-21-12.]~~

(7) If, as a result of the division's investigation of a complaint, the director determines that there is reasonable cause to support ~~[the allegations]~~ an allegation in the complaint~~[-all of the following apply]~~:

(a) ~~[The]~~ (i) the division shall informally endeavor to eliminate or correct the discriminatory housing practice through a conciliation conference between the parties, presided over by the division~~[- Nothing]~~; and

(ii) nothing said or done in the course of ~~[the]~~ a conciliation conference described in Subsection (7)(a)(i) may be made public or admitted as evidence in a subsequent proceeding under this chapter without the written consent of the parties concerned~~[-]; and~~

(b) ~~[If]~~ (i) if the conciliation conference described in Subsection (7)(a) results in voluntary compliance with this chapter~~[-];~~

(A) the parties shall execute a conciliation agreement, approved by the division, setting forth the resolution of the issues ~~[shall be executed by the parties. The]; and~~

(B) the parties or the division may enforce the conciliation agreement in an action filed in a court of competent jurisdiction[-]; or

~~[(c) If]~~ (ii) if the division is unable to obtain a conciliation agreement, the director shall issue a written determination stating the director's findings and ordering ~~[any]~~ appropriate relief under Section 57-21-11.

Section 2. Section **57-21-10** is amended to read:

**57-21-10. Judicial election or formal adjudicative hearing.**

(1) (a) If, pursuant to Subsection 57-21-9~~(6)~~ or (7)(c)(b)(ii), the director issues a written determination ~~[finding reasonable cause to believe that a discriminatory housing practice has occurred, or is about to occur, a respondent]~~, a party to the complaint may obtain de novo review of the determination by submitting a written request for a formal adjudicative hearing to be conducted by the commission's Division of Adjudication in accordance with Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to the director within 30 days ~~[from the date of issuance of]~~ after the day on which the director issues the determination.

(b) If the director does not receive a timely request for review, the director's determination becomes the final order of the commission and is not subject to further agency action or direct judicial review.

(2) If a ~~[respondent]~~ party files a timely request for review pursuant to Subsection (1):

(a) any ~~[respondent, complainant, or aggrieved party]~~ party to the complaint may elect to have the de novo review take place in a civil action in the district court rather than in a formal adjudicative hearing with the Division of Adjudication by filing an election with the commission in accordance with rules established by the commission pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form and time period for the election;

(b) the complainant shall file a complaint for review in the forum selected pursuant to Subsection (2)(a) within 30 days after the completion of the forum selection process; and

(c) the commission shall determine whether the director's determination is supported by substantial evidence.

(3) ~~(a) [If, pursuant to Subsection (2)(c), the commission determines that the director's determination is supported by substantial evidence, the]~~ The commission shall provide legal representation on behalf of the aggrieved person, including the filing of a complaint for review as required by Subsection (2)(b), to support and enforce the director's determination in the de novo review proceeding, if:

(i) in accordance with Subsection 57-21-9(7)(b)(ii), the director issued a written determination finding reasonable cause to believe that a discriminatory housing practice had occurred, or was about to occur; and

(ii) under Subsection (2)(c), the commission determines that the director's determination under 57-21-9(7)(b)(ii) is supported by substantial evidence.

(b) Notwithstanding ~~[any provisions of]~~ Title 63G, Chapter 4, Administrative Procedures Act, the commission's determination, under Subsection (2)(c), regarding the existence or nonexistence of substantial evidence to support the director's determination is not subject to further agency action or direct judicial review.

(4) Upon timely application, an aggrieved person may intervene with respect to the issues to be determined in a formal adjudicative hearing or in a civil action brought under this section.

(5) If a formal adjudicative hearing is elected~~[-all of the following apply]:~~

(a) ~~[The]~~ the presiding officer shall commence the formal adjudicative hearing within 150 days after the ~~[respondent files]~~ day on which a request for review of the director's determination is filed, unless it is impracticable to do so~~[-]~~;

(b) ~~[The]~~ the investigator who investigated the matter may not participate;

(i) in the formal adjudicative hearing, except as a witness~~[-, nor may the investigator participate];~~ or

(ii) in the deliberations of the presiding officer~~[-];~~

(c) ~~[Any]~~ any party to the complaint may file a written request to the Division of Adjudication for review of the presiding officer's order in accordance with Section 63G-4-301 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings~~[-];~~ and

(d) ~~[A]~~ a final order of the commission under this section is subject to judicial review as provided in Section 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

(6) If a civil action is elected, the commission is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter.

(7) (a) The commission shall make final administrative disposition of the complaint alleging a discriminatory housing practice within one year after the ~~[filing of]~~ complainant filed the complaint, unless it is impracticable to do so.

(b) If the commission is unable to make final administrative disposition within ~~[one year]~~ the time period described in Subsection (7)(a), the commission shall notify the complainant, respondent, and any other interested party in writing of the reasons for the delay.